No. 14858

# In the United States Court of Appeals for the Ninth Circuit

GLADYS LAYCOCK, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

*UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON*

## BRIEF FOR THE UNITED STATES, APPELLEE


PERRY W. MORTON,
*Assistant Attorney General.*

CLARENCE E. LUCKEY,
*United States Attorney,*
*Portland, Oregon.*

JAMES W. MORRELL,
*Assistant United States Attorney,*
*Portland, Oregon.*

ROGER P. MARQUIS,
HAROLD S. HARRISON,
*Attorneys, Department of Justice,*
*Washington, D. C.*

# INDEX



## CITATIONS

Cases:

Cases—Continued

Statutes:



Miscellaneous:

**In the United States Court of Appeals**
**for the Ninth Circuit**

---

No. 14858

GLADYS LAYCOCK, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

---

*UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON*

---

# BRIEF FOR THE UNITED STATES, APPELLEE

---

## OPINION BELOW

A memorandum opinion of the district court filed April 22, 1955 (R. 12-14), has not been reported.

## JURISDICTION

This is an appeal from an order entered by the district court on May 18, 1955, dismissing appellant's complaint (R. 14). The jurisdiction of the district court over the United States was sought to be invoked under 28 U.S.C. sec. 1346(a)(2), (R. 3). On July 15, 1955, appellant filed her notice of appeal (R. 15). The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1291.

STATUTES INVOLVED

1. 28 U.S.C. sec. 2401(a) provides in pertinent part as follows:

> Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action accrues.

2. The Act of August 27, 1935, Ch. 780, Sec. 2, 49 Stat. 938, 939, 31 U.S.C. sec. 773(b), provides in pertinent part as follows:

> Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action * * * in any proceeding of any nature whatsoever * * * (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition * * * of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn * * *.

3. Presidential Proclamation 2914 of December 16, 1950, 15 F.R. 9029, provides in pertinent part as follows:

> WHEREAS recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and
>
> WHEREAS world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world; and

WHEREAS, if the goal of communist imperialism were to be achieved, the people of this country would no longer enjoy the full and rich life they have with God's help built for themselves and their children; they would no longer enjoy the blessings of the freedom of worshipping as they severally choose, the freedom of reading and listening to what they choose, the right of free speech including the right to criticize their Government, the right to choose those who conduct their Government, the right to engage freely in collective bargaining, the right to engage freely in their own business enterprises, and the many other freedoms and rights which are a part of our way of life; and

WHEREAS the increasing menace of the forces of communist aggression requires that the national defense of the United States be strengthened as speedily as possible:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do proclaim the existence of a national emergency * * *.

4. Pertinent provisions of the Gold Reserve Act of 1934, 48 Stat. 337, 12 U.S.C. sec. 213; the Trading with the Enemy Act, as amended by the Emergency Banking Relief Act of March 9, 1933, 48 Stat. 1, 12 U.S.C. sec. 95(a); Executive Order 6260, as amended, 12 U.S.C. following sec. 95(a); and United States Treasury Department Gold Regulations, 31 C.F.R. Part 54, as amended, 19 F.R. 4309-4316, the validity and constitutionality of which are challenged by the appellant, are set forth in the Appendix, pp. 30-34, *infra*.

QUESTIONS PRESENTED

1. Whether recovery for a taking can be based upon acts of government officers unauthorized because of unconstitutionality of the statute pursuant to which the acts were performed.

2. Whether the injuries which might result from the Government's monetary and gold regulation, could constitute a "taking" for which just compensation is required by the Fifth Amendment to the Constitution.

3. Whether the Gold Reserve Act of 1934, 48 Stat. 337, 12 U.S.C. sec. 213; the Trading with the Enemy Act, as amended by the Emergency Banking Relief Act of March 9, 1933, 48 Stat. 1, 12 U.S.C. sec. 95(a), and Executive Orders and administrative regulations issued thereunder concerning the valuation, acquisition and hoarding of gold are valid and constitutional.

4. Whether, when the complaint shows on its face that the Acts challenged were passed by Congress over 20 years ago, such action can be maintained in view of the six-year statute of limitations provision of 28 U.S.C. sec. 2401(a).

5. Whether, in the face of the Act of August 27, 1935, Ch. 780, Sec. 2, 49 Stat. 938, 939, 31 U.S.C. sec. 773(b), by which Congress expressly withdrew any consent to suit against the United States arising "upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition * * * of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money", appellant's complaint alleged facts sufficient to establish jurisdiction over the United States.

STATEMENT

Appellant commenced this action on November 10, 1954, by the filing of a complaint which sought to invoke the jurisdiction of the District Court under the Tucker Act, 28 U. S. C. sec. 1346(a) (2), (R. 3). The complaint alleges that certain statutes enacted by the Congress in 1917, 1933 and 1934 and certain Executive Orders and administrative regulations issued pursuant thereto generally relating to transactions in gold are invalid and unconstitutional (R. 5-10). The complaint alleges further that these allegedly invalid statutes, Executive Orders and regulations prevented appellant from making lawful use of her property, a gold mine, directly interfered with her right to own and enjoy the use of private property, and deprived her of her property without due process of law and without just compensation (R. 6-10).

The United States moved to dismiss the complaint on the grounds (1) that the complaint showed on its face that the acts constituting the alleged wrong committed by the defendant occurred more than six years prior to the filing of the complaint and hence the action is barred by the statute of limitations; (2) that the complaint fails to state a claim or cause of action upon which relief can be granted; and (3) that the complaint fails to allege facts sufficient to establish jurisdiction over the United States (R. 10-11).

On April 22, 1955, the District Court filed its opinion (R. 12-14) concluding that appellant's damages (R. 13-14):

> are indirect and consequential, resulting from the Government's monetary and gold regulations, and do not result from a "taking" by the Government,

> the only basis upon which plaintiff may under the Tucker Act claim a breach of an implied contract with the United States based upon an infringement of her constitutional rights.

An appropriate order dismissing the complaint was entered on May 18, 1955 (R. 14). This appeal followed (R. 15).

## ARGUMENT

### I

**Even if Appellant's Attack Upon the Statutes and Regulations Relating to Gold Were Valid, Recovery in the Present Case Cannot be Justified Because Any Alleged Taking Would be Unauthorized**

Initially we point out that the appellant defeats her own claim for damages as for a taking under the Fifth Amendment. Even if it be assumed that there were a taking in this case, appellant insists that the laws and regulations under which the alleged taking was supposedly accomplished are unconstitutional and hence invalid. If that is so, it is settled that appellant cannot recover from the United States because of lack of authorized action. In *United States* v. *North American Co.*, 253 U. S. 330, 334 (1920), the Supreme Court said:

> Power to take possession of the company's mining claim was not vested by law in General Randall; and the Secretary of War had not, so far as appears, either authorized it or approved it before December 8, 1900 * * *. What he had done before that date having been without authority, and hence tortious, created no liability on the part of the Government.[1]

---

[1] The appellant has not invoked the Federal Tort Claims Act, 62 Stat. 993, 28 U.S.C. sc. 1346(b), (R. 3; Br. 14-18), hence lia-

Accord: *United States* v. *Goltra,* 312 U.S. 203, 208 (1941); *Mitchell* v. *United States,* 267 U. S. 341, 345 (1925); *Hooe* v. *United States,* 218 U. S. 322, 333-334 (1910); *Hughes* v. *United States,* 230 U. S. 24, 35 (1913); *Bussey* v. *United States,* 70 C. Cls. 104, 118 (1930). Cf. *Youngstown Co.* v. *Sawyer,* 343 U. S. 579, 585 (1952). It necessarily follows that if the regulation of gold transactions was invalid, there could not be any authorized taking thereunder.

## II

**The Challenged Actions Were in Exercise of Regulatory Powers of the United States and Could Not, Even If Invalid, Constitute an Exercise of the Power of Eminent Domain**

Appellant alleges damage by reason of the enactment of laws and regulations concerning the regulation of gold by the Government (R. 5-10). Appellant's action, filed under the Tucker Act [28 U. S. C. sec. 1346(a)(2)] does not purport to involve any express contract with the Government (R. 3). Rather, appellant's claim is that the Tucker Act gives her a remedy because her property was "taken" in violation of the just compensation provision of the Fifth Amendment (R. 3, 9). Yet, as the District Court points out (R. 13), appellant "does not claim a physical appropriation or a destruction or a taking of her mines or of the gold ore which they contain." The District Court properly concluded (R. 13):

> her damages are indirect and consequential, resulting from the Government's monetary and gold regulations, and do not result from a "taking" by

---

bility under that act need not be discussed. However, we do not understand that recovery may be had under that Act for unconstitutional actions of government officers.

the Government, the only basis upon which plaintiff may under the Tucker Act claim a breach of an implied contract with the United States based upon an infringement of her constitutional rights.

Analysis of the cases, including all those cited by the appellant (*infra,* pp. 15-16, 19, 23, 25), shows that to constitute a "taking" within the reach of the Fifth Amendment, there must be an appropriation to a public use of a thing of value. While such appropriation can be by destroying property in the accomplishment of a public use (e. g., *United States* v. *Welch,* 217 U. S. 333, 339 (1910)), in each case, in the words of the District Court, "there was an actual physical taking of an ascertainable thing of value, such as real or personal property or an interest therein, converted to a public use" (R. 13). Neither appellant's mines nor her mineral bearing ore has been either taken or destroyed. If any profit which she might expect from mining her ore has been impaired because of the Government's monetary and gold regulations, her damages are clearly indirect and consequential and do not result from a "taking" by the Government.

The distinction between the injuries that may follow as a consequence of government regulations, as contrasted with an exercise of the eminent domain power, has been made many times. The distillers of the country complained that their property was being taken without due process of law and just compensation after adoption of the Eighteenth Amendment and enactment of the Federal Prohibition Statute. The Supreme Court held that there was no such taking. *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146 (1919).

Similarly, a War Production Board order prohibited

the consumption, processing, and delivery of pulpwood except upon specific authorization of WPB. The plaintiff in the case was forced to discontinue operations for one year as a consequence. The court held that the plaintiff's losses were not compensable because no "actual taking of some right in the property" of the plaintiff occurred. *St. Regis Paper Company* v. *United States,* 110 C. Cls. 271, 276, 76 F. Supp. 831, 834 (1948), certiorari denied, 335 U. S. 815. In this case the court quoted, *inter alia,* from *Royal Holland Lloyd* v. *United States,* 73 C. Cls. 722, 732: "It has been repeatedly held that acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are not a 'taking' within the meaning of the constitutional provision (citing cases). In order to come within the constitutional provision, there must be shown to have been an exercise, by the United States, of a proprietary right, for a greater or less time, in the property taken. * * *" The court went on to say (110 C. Cls. at pp. 276-277, 76 F. Supp. at p. 834):

> The plaintiff asserts that the action taken by the defendant had exactly the same effect and resulted in the same losses that would have occurred had the property been actually taken by the defendant. This may be true, but the fact remains that the property was left in the hands of the plaintiff and the facts do not bring it within the rules laid down by the courts in construing the Fifth Amendment in such a way as to permit a recovery of such damages in this court.

Similar holdings are to be found in cases dealing with various regulation situations. See *P. Dougherty Co.* v.

*United States,* 113 C. Cls. 448, 459, 83 F. Supp. 688, 690-691 (1949), certiorari denied, 338 U. S. 858; *Green* v. *Gallup,* 46 N. Mex. 71, 75, 120 P. 2d 619, 621 (1941); *Eggebeen* v. *Sonnenburg,* 239 Wis. 213, 219, 1 N. W. 2d 84, 87 (1941); *Gambrell* v. *Chalk Hill Theatre Co.,* 205 S. W. 2d 126, 130 (Tex. Civ. App. 1947); *Baltimore* v. *Bregenzer,* 125 Md. 78, 84-85, 93 Atl. 425, 426-427 (1915).[2]

It has recently been held that legislation, treaties, and a Presidential proclamation prohibiting the hunting of wild geese in an area where the plaintiffs' farm was located, did not constitute an unlawful taking of the plaintiffs' property, even though the value thereof may have been reduced. *Bishop* v. *United States,* 130 C.Cls. —, 126 F.Supp. 449, 452 (1954), certiorari denied, 349 U.S. 955, the Court stating, *inter alia:*

> The mere fact that plaintiffs' property was damaged as a result of the issuance of this proclamation is not sufficient to show a taking. Many governmental actions often affect a person's business or

[2] It is also well settled that a valid exercise of a regulatory power is not compensable even if it causes damages to a property owner; or even if it deprives the owner of the only use to which the property can be profitably put; or even if the purpose of the regulation could have been accomplished by an eminent domain taking. *Murphy* v. *California,* 225 U.S. 623, 629 (1912); *Laurel Hill Cemetery* v. *San Francisco,* 216 U.S. 358, 364-366 (1910); *Powell* v. *Pennsylvania,* 127 U.S. 678, 682 (1888). Appellant challenges the laws and regulations concerning gold arguing, *inter alia,* "Neither gold mining nor its product is an evil" (Br. 38) and that regulation is improper. But the plaintiffs in error in the above-cited case contended that their particular activities, which were regulated, were "in no way harmful" (216 U.S. at p. 364), were "not necessarily harmful to the public welfare" (225 U.S. at p. 625), and, indeed, that the regulated subject was "wholesome and nutritious" (127 U.S. at p. 682). The regulation was in each case held to be valid and compensation was not allowed. As a practical matter, there is hardly any regulatory action which does not have an adverse effect on at least some of the parties subject to it.

property either favorably or adversely. For example, when the prohibition amendment was adopted distilleries were put out of business, but it was held in Hamilton v. Kentucky Distilleries, 251 U.S. 146, 40 S. Ct. 106, 64 L.Ed. 194, that the Government was not liable. When rent controls were put into effect, property owners' income was seriously affected, but it was held in Bowles v. Willingham, 321 U.S. 503, 64 S. Ct. 641, 88 L.Ed. 892, that the Government was not liable. Many other instances readily come to mind. See e.g., St. Regis Paper Co. v. United States, 110 C.Cls. 271, 76 F. Supp. 831; Ora Fina Consolidated Mines v. United States, 92 F. Supp. 1016, 118 C.Cls. 18, certiorari denied 341 U.S. 948, 71 S. Ct. 1015, L. Ed. 1371. [3]

---

[3] In the *Oro Fino* case and a later case (*Alaska-Pacific Cons. Mining Co.* v. *United States,* 120 C.Cls. 307 (1951)), the Court of Claims held that a War Production Board order closing the plaintiffs' mines did not result in the taking of plaintiffs' property for public use, for which the Government would be liable under the Fifth Amendment, and that the plaintiffs' petitions did not set forth a cause of action. Following these cases, three similar cases (*Idaho Maryland Mines Corp.* v. *United States,* 122 C.Cls. 670 (1952); *Homestake Mining Co.* v. *United States,* 122 C.Cls. 690 (1952); *Central Eureka Mining Co.* v. *United States,* 122 C.Cls. 691 (1952)) were filed in which the plaintiffs made allegations somewhat more specific than the general ones which were made before the Court of Claims in the preceding cases. In the three later cases, the Court of Claims overruled demurrers and concluded that a trial on the merits was warranted. Motions to vacate the prior decisions in their cases were filed by the plaintiffs in the *Oro Fino* and *Alaska-Pacific* cases. Over opposition, and without recognizing a request for oral argument, the Court of Claims granted those motions. A trial on the merits in these several cases, all of which allege a "taking" as a result of the War Production Board order there involved, has been held and the cases [Nos. 49468, 49486, 49693, 50182, 50195 and 50214] are pending decision in the Court of Claims.

It is to be noted that in concluding that the plaintiffs in the above-discussed group of cases were entitled to a trial on the

> Defendant has not invaded plaintiffs' property, it has asserted no proprietary right in it. The gist of the whole matter is that Congress has passed an Act, valid under the Constitution * * *.

Another example of the distinction between regulatory action and the exercise of eminent domain appears in *Ainsworth* v. *Bar Ballroom Company,* 157 F.2d 97 (C.A. 4, 1946), where an Army-Navy order had declared a property owner's dance hall "off limits" to military personnel. A preliminary injunction enjoining enforcement by the military of the order was reversed and in its opinion the court made the following significant statement (157 F.2d at p. 100):

> If the order was within the discretionary authority of the heads of the War and Navy Departments, duly delegated to appellants, the consequential damage which followed the making and enforcing of the order clearly would not create a justiciable controversy. This is so, even if it be conceded there was an abuse of discretion. * * *

---

merits, the Court of Claims took occasion expressly to state (122 C.Cls. at p. 689):

> The establishment at a trial on the merits of proof of facts by plaintiff to rebut the presumption that the particular exertion of the Government's war powers represented by L-208 was justified, *is a most difficult burden,* and it may well be that even then, as in such cases as *Hamilton* v. *Kentucky Distilleries Co.,* 251 U.S. 146, *Perrin* v. *United States,* 232 U.S. 478, and *United States* v. *Doremus,* 249 U.S. 86, defendant will come forward with sufficient facts to justify Order L-208 as a proper regulation * * * [Emphasis added.]

From the above it is readily apparent that the appellant's heavy reliance upon the *Homestake Mining Co.* case (Br. p. 37), as though it were a fully adjudicated case, is misplaced.

In this connection see Note (1950) 19 Geo. Wash. L. Rev. 184, 186-200, which contains an analysis of the distinction voiced by the courts between "regulations" and "takings". There, four elements which must be present to impose liability for a compensable taking as a result of governmental action are listed. These are (*Ibid.,* pp. 193-194, 200):

> (1) "* * * the governmental action which interferes with the use of the property must affect only an individual or a limited group as distinguished from governmental action affecting the public generally or some large segment thereof."
>
> (2) "* * * the interference with the property must be intentional in the sense that the act causing the interference was intentional, and the interference, a natural and probable consequence of the action."
>
> (3) "* * * it would seem necessary that there be a substantial interference with the owner's use of his property."
>
> (4) "* * * it would seem necessary that the substantial interference resulting from the intentional action of the government should be in the form of some positive invasion of the property, rather than an exercise of a purely negative power to prevent the owner from using the property in certain ways."

Commenting on these four elements of a compensable taking, the Note says (*Ibid.,* p. 194):

> Of those four requirements, the first three may also be present in cases of regulation. The fourth requirement, it is believed, is the one which is pres-

> ent in cases of taking but not in cases of regulation. In other words, in regulation, the government merely sets limits to the ways in which the owner may use his property, without itself affirmatively encroaching upon the property, while in a taking, the interference with the owner's use of the property is caused by affirmative invasion of the property as a consequence of the government's acts.

In the instant case not even the first requirement is met, i.e., that the governmental action must affect only an individual or a limited group, since the acts and regulations complained of apply generally. The fact that appellant is more seriously affected by the governmental action than are others generally, is purely incidental. It is at least doubtful that requirement number two (intentional interference) has been met, since the laws and regulations here challenged were primarily concerned with monetary and banking regulation and the protection of the foreign commerce of the United States.[4]

The third and fourth requirements may appropriately be discussed together. The third calls for "substantial interference" with the owner's use of his property and the fourth is that such "substantial interference" must be in the form of some "positive invasion" of the property. Here the owner was not told that she

---

[4] Even the appellant does not allege that there was "an intentional appropriation of the property to the public use." *Vansant* v. *United States*, 75 C.Cls. 562, 566 (1932); *P. Dougherty Co.* v. *United States*, 113 C. Cls. 448, 459, 83 F. Supp. 688, 691 (1949), certiorari denied 338 U.S. 858. The Supreme Court stated long ago that "There can be no recovery under the Tucker Act if the intention to take is lacking." *Mitchell* v. *United States*, 267 U.S. 341, 345 (1925).

could not use her property for purposes of gold mining and is not now restricted from doing so. The Government took no action which affirmatively encroached on her property or any use appellant chooses to make of it. It simply controlled the price and the market of this particular product. And even if it could properly be contended that the challenged laws and regulations constituted "substantial interference" with the appellant's use of her property, clearly, the fourth requirement was not present in the instant case, because, in the words of the Note, "the governmental action did not take the form of an affirmative encroachment upon the property, but rather, merely set limits to the way in which the owners might deal with it." *Ibid.,* p. 196.

It follows that the laws and regulations here involved would not give rise to a claim for just compensation even if the validity of the laws and regulations was still an open question and they were determined to be invalid.

None of the cases cited by appellant supports her argument that there has been a taking of property here. The furthest removed from the present case are *United States* v. *General Motors Corp.,* 323 U.S. 373 (1945), Br. 30, and *Kimball Laundry Co.* v. *United States,* 338 U.S. 1 (1949), Br. 30, where condemnation proceedings were brought to acquire temporary use of certain real property. Equally irrelevant are the flooding cases, *United States* v. *Dickinson,* 331 U.S. 745 (1947), Br. 30, 39; *United States* v. *Welch,* 217 U.S. 333 (1910), Br. 30, and *United States* v. *Lynah,* 188 U.S. 445 (1903), Br. 40, where the question was whether a particular invasion by flooding was authorized by the federal navigation power. So also the air-space cases, *Richards* v.

*Washington Terminal Co.,* 233 U.S. 546 (1914), Br. 30; *Portsmouth Co.* v. *United States,* 250 U.S. 1 (1919), *Peabody* v. *United States,* 231 U.S. 530 (1913); *Portsmouth Co.* v. *United States,* 260 U.S. 327 (1922), Br. 40, and *United States* v. *Causby,* 328 U.S. 256 (1952), Br. 40, simply decided whether or not particular actions above the ground constituted invasions of the landowners' properties. *Youngstown Co.* v. *Sawyer,* 343 U.S. 579 (1952), involving an injunction against seizure of the steel industry obviously does not tend to support appellant's claim for damages.

In *Edward P. Stahel & Co.* v. *United States,* 111 C.Cls. 682 (1948), certiorari denied, 336 U.S. 951, cited Br. 32, the United States ordered the plaintiffs to sell their silk, upon request, to those who would use it for purposes of the Government, or to the Government itself, and prohibited any other delivery or use of the silk without specific permission. The Court concluded that the Government had decided "that all the raw silk in the country was needed for public use * * *" (111 C.Cls. at p. 742), and that the taking of the silk was accomplished by the orders respecting delivery and use issued by the Government to the owners, at least as to silk in fact physically delivered to the Government. In *Penna. Coal Co.* v. *Mahon,* 260 U.S. 393 (1922), also relied upon by the appellant (Br. 11, 28-29), the statute prohibited the mining of coal in a manner which was there admitted to destroy previously existing rights of property and contract (260 U.S. at pp. 412-413). In the instant case the challenged laws and regulations do not prohibit the appellant from mining her ore. Indeed, she is at liberty to do so.[5] Any effect upon her is

[5] Thus, appellant's rhetorical question "If the steel companies can get their property back from the executive department, why

indirect and consequential as indicated by her allegation that she finds that she cannot operate her mine at a profit (Br. 20, 35-36). But "Frustration and appropriation are essentially different things." *Omnia Co.* v. *United States,* 261 U.S. 502, 513 (1923); *United States ex rel. T.V.A.* v. *Powelson,* 319 U.S. 266, 281-283 (1943), and the authorities there cited.

As the Supreme Court stated in the *Legal Tender Cases,* 12 Wall. 457, 551 (1870) [which appellant criticizes along with the later *Gold Clause Decisions* (Br. 55-64)] with respect to a similar argument that acts were prohibited by the Fifth Amendment:

> That provision has always been understood as referring only to a direct appropriation, and not to consequential injuries resulting from the exercise of lawful power. It has never been supposed to have any bearing upon, or to inhibit laws that indirectly work harm and loss to individuals. A new tariff, an embargo, a draft, or a war may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless. They may destroy the worth of contracts. But whoever supposed that, because of this, a tariff could not be changed, or a non-intercourse act, or an embargo be enacted, or a war be declared? * * *

## III

**The Validity and Constitutionality of the Challenged Laws and Regulations Have Long Since Been Determined**

Since, at least 1917, Congress has enacted various pieces of legislation to control gold and empowered the

---

can't Mrs. Laycock 'get her property back' so that she can make use of it at a profit?", is easily answered. Her property has never been taken.

President to issue Executive Orders concerning the valuation of gold and acquisition and hording of it. Appellant alleges that these acts, proclamations, Executive Orders and regulations were invalid and unconstitutional. But the validity and constitutionality of these laws have been upheld and are no longer open questions.

The constitutionality of the various measures with respect to gold was first treated in the "Gold Clause Decisions," one of which was *Perry* v. *United States,* 294 U.S. 330 (1935). After expressly referring to the Acts of March 9, 1933, 48 Stat. 1, and January 30, 1934, 48 Stat. 337, and Executive Orders and Regulations of the Secretary of the Treasury (294 U.S. at pp. 355-356)—which are challenged by the appellant in the instant case (R. 3-10; Br. 3-8, 46)—the Supreme Court held that Congress was entitled to take the challenged action by virtue of its authority to deal with gold as a medium of exchange. It is enough to say of appellant's lengthy argument (Br. 55-64) that the Supreme Court erred in the *Perry* and subsequent cases (as well as earlier decisions such as *the Legal Tender Cases*), that while appellant might appropriately try to convince the Supreme Court that it had so frequently committed and "perpetuated" so many "obvious errors" (Br. 55), until such decisions are overturned by the Supreme Court, this Court is bound by them. *Bakewell* v. *United States,* 110 F.2d 564 (C.A. 8, 1940), certiorari denied, 310 U.S. 638.

The constitutionality of the Gold Reserve Act of 1934 (48 Stat. 337) was upheld in the face of a contention that it contained an unconstitutional delegation of legislative power by Congress to the President and Secretary of the Treasury. *Uebersee Finanz-Korporation,*

*etc.* v. *Rosen,* 83 F. 2d 225 (C.A. 2, 1936), certiorari denied, 298 U.S. 679. Cf. Br. 33-36. In *Campbell* v. *Chase Nat. Bank of City of New York,* 5 F. Supp. 156 (S.D. N.Y. 1933), affirmed on jurisdictional grounds, 71 F. 2d 669 (C.A. 2, 1934), certiorari denied, 293 U.S. 592, a case relied upon by the appellant (Br. 70), it was held that under the Trading With the Enemy Act, as amended March 9, 1933, as an incident of its constitutional power to coin money, regulate its value and borrow on the credit of the United States, Congress had the power to legislate regarding gold bullion held by persons within the United States and to treat gold bullion as affected with public interest. This case also rejected a contention that there had been an unconstitutional delegation of legislative power to the executive (5 F. Supp. at pp. 172-173). The Court further considered and rejected the argument that gold bullion could only be regulated as a commodity and not a potential source of money or credit. 5 F. Supp. at p. 168. Cf. Br. 23 where the appellant in the instant case states "In the complaint we are talking about gold as a commodity (private property) and not as money. * * * "

Executive Order 6260, as amended, 12 U.S.C. following sec. 95(a), challenged by the appellant (Br. 5-6, 13, 46, *et seq.*), which prohibits the acquisition or possession of gold bullion, except upon license from the Treasury Department, has been upheld by this and other courts as presently in existence and authorized by the Trading With the Enemy Act, as amended, 12 U.S.C. sec. 95(a), in several criminal cases brought under that Order.[6] See *Ruffino* v. *United States,* 114 F. 2d 696

[6] The challenged Gold Reserve Act and "Gold Regulations" have also been upheld in a criminal proceeding. *United States* v. *Barrios,* 124 F. Supp. 807, 808 (S.D. N.Y. 1952).

(C.A. 9, 1940); *Farber* v. *United States,* 114 F. 2d 5 (C.A. 9, 1940), certiorari denied, 311 U.S. 706; *United States* v. *Levy,* 137 F. 2d 778 (C.A. 2, 1943); *United States* v. *Chabot,* 193 F. 2d 287 (C.A. 2, 1951). Executive Order 6260, as well as the Banking Emergency Act of March 9, 1933, 48 Stat. 1, 12 U.S.C. sec. 95(a), which amended the Trading With the Enemy Act of October 6, 1917, 40 Stat. 415, and the Gold Reserve Act of 1934, 48 Stat. 337, 12 U.S.C. sec. 213, were all upheld in *United States* v. *71.41 Ounces Gold Filled Scrap,* 94 F. 2d 17, 18-19 (C.A. 2, 1938). Executive Order 6260 has not only been upheld as applicable to all gold held within the United States by these decisions, it was also expressly ratified by Section 13 of the Gold Reserve Act of 1934, 48 Stat. 337, 343, 12 U.S.C. sec. 213.[7]

Appellant's contention that she is entitled to just compensation as for a taking under the Fifth Amend-

---

[7] The constitutionality of the Trading With the Enemy Act, as amended, 12 U.S.C. sec. 95(a), and Executive Orders issued thereunder, particularly Executive Order 6260, came under attack in the same district in which the instant case arose in the cases of *United States* v. *Stephen Gilbert Crippen, et al.* (D. Ore. No. C-17892) and *United States* v. *Wilbur M. Walls,* (D. Ore. No. C-17900). The defendants were there charged with acquiring and possessing gold bullion without first having obtained a license for that purpose from the Secretary of the Treasury. They moved for a dismissal of the charge, stating that the Trading With the Enemy Act was unconstitutional as an unlawful delegation of legislative powers to the executive, and that it denied the right of an individual to own private property. Executive Order 6260 was declared by those defendants to be unconstitutional in that it exceeded the powers granted by the statute, that it deprived persons of property without due process of law, and that it abolished lawful money. Denying the defendant's motion to dismiss, Judge McColloch held in an unreported memorandum opinion that there was no doubt of the power of the Government, as part of its monetary program, to forbid the possession of gold bullion except upon license (Appendix, *infra,* pp. 35-36).

34-35

ment has also been expressly dealt with—and rejected—by the courts. In *Alaska Juneau Gold Mining Co.* v. *United States,* 94 C. Cls. 15 (1941), it was contended that newly-mined gold melted into gold bars was not coin, currency or monetary gold and had no relation to the monetary system of the United States.[8] The court held that such newly-mined gold was covered by the Act of March 9, 1933, 48 Stat. 1, and the regulations issued thereunder, and that Congress had the power to appropriate and regulate such gold bullion. There, the plaintiff had sought to recover the fair market value of its gold. The court held (94 C. Cls. at p. 40) that the plaintiff was "not entitled to recover any amount as just compensation as for a taking of private property under the Fifth Amendment to the Constitution in excess of the amount paid by the defendant for the gold in question"—which was the official mint price for gold.[9]

See also *Bakewell* v. *United States,* 28 F. Supp. 504, 506 (E.D. Mo. 1939), affirmed 110 F. 2d 564 (C.A. 8,

---

[8] Cf. Br. 67 where appellant states "there is no authority for arbitrary pricing of newly mined gold, or for that matter gold in any form" and "there is no authority contained therein giving the Secretary of the Treasury and/or the President power to set a fixed and mandatory price for newly mined gold."

[9] The court went on to indicate that even if it could have been said that the Treasury regulations were doubtful, Congress expressly approved, ratified, and confirmed "All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury" under the various Acts governing this matter. 94 C. Cls. at pp. 41-42; Act of Jan. 30, 1934, 48 Stat. 337, 343, 12 U.S.C. sec. 213. It is to be noted that Executive Order 6260, which appellant challenges (Br. 5-6, 13, 46, *et seq.*), and its amendatory Executive Orders [No. 6556, Jan. 12, 1934; No. 6560, Jan. 15, 1934], were all issued prior to the enactment of the Act of Jan. 30, 1934, *supra,* and so were expressly approved, ratified, and confirmed by the Congress. This Court has so held. *Ruffino* v. *United States,* 114 F. 2d 696, 697 (1940).

1940), certiorari denied, 310 U.S. 638, which characterizes the legislative restrictions on the use of gold and the executive actions taken thereunder as

> the restrictions on the use of gold *which the Congress had the power to impose* and which were *validly imposed* by the monetary legislation enacted by it during 1933 and 1934 and by *executive action validly taken* pursuant thereto * * * . [Emphasis added.]

Moreover, appellant's constitutionality argument is fallacious on its face. Thus she argues (Br. 67), following a quotation from the Gold Reserve Act: "Note that the language uses the terms 'regulations' and 'conditions' but not 'licenses' * * *." Appellant then quotes from Executive Order 6260 of August 28, 1933 (12 U. S. C. following sec. 95(a), Appendix *infra,* pp. 31-32) and concludes (Br. 68):

> We question the legal right of the President to authorize licensing by the Treasury when the authority was not given in the enabling legislation. Further, subsequent approval by Congress of the Presidential Act, to our mind, cannot make something out of nothing. If there was no authority in the first place, then the attempted Executive legislation is ineffective. Therefore, it would seem that in order to achieve valid legislation, Congress would have to re-enact the Executive legislation. * * *

But, even if the omission of the word "licenses" would have been significant, the fact is, as shown by the excerpt quoted in appellant's own brief (p. 67), that in the Act of March 9, 1933 (48 Stat. 1), Congress ex-

pressly provided that the President could accomplish the purposes of the Act "through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, *licenses,* or otherwise—" [Italics added.] [10] Moreover, the dates show that this express congressional authority was prior authorization rather than "subsequent approval" as appellant would have it appear. Further, Congress did later take occasion to approve, ratify, and confirm "All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury" under its previously enacted laws which related, *inter alia,* to the regulation of gold. Act of January 30, 1934, c. 6, sec. 13, 48 Stat. 337, 343, 12 U. S. C. sec. 213, 31 U. S. C. sec. 824. And there can, of course, be Congressional ratification of Executive action. *Brooks* v. *Dewar,* 313 U. S. 354 (1941).

The argument which appellant advances here, including her reliance (Br. 68-70) on the decisions in *United States* v. *Driscoll,* 9 F. Supp. 454 (D. Mass. 1935), and *Campbell* v. *Chase Nat. Bank of City of New York,* 5 F. Supp. 156 (S. D. N. Y. 1933), affirmed on jurisdictional ground, 71 F. 2d 669 (C. A. 2, 1934), certiorari denied, 293 U. S. 592, was considered and rejected by the United States Court of Appeals for the Second Circuit in *United States* v. *Levy,* 137 F. 2d 778 (1943).

Appellant's contention (summarized at Br. 13) that

---

[10] See also the statement by the Supreme Court with reference both to the Act of March 9, 1933, 48 Stat. 1, and the Gold Reserve Act of January 30, 1934, 48 Stat. 337, "Such dealings [in gold coin] could be had only for limited purposes and under *license.*" [Italics supplied.] *Perry* v. *United States,* 294 U.S. at p. 356.

the Trading with the Enemy Act is applicable only "during time of war," is completely without merit. As shown by the excerpt quoted in appellant's own brief (pp. 5, 67), that Act is expressly applicable not only during time of war but also "during any other period of national emergency declared by the President" (48 Stat. 1, 12 U. S. C. sec. 95(a)).[11] By Proclamation 2914 of December 16, 1950, 15 F. R. 9029 (*supra,* p. 2), the President declared the existence of a national emergency and this condition is still in existence.[12]

Moreover, such "during time of war" argument and the related argument that appellant is not an "enemy" (Br. 36), overlooks the fact that the Act of March 9, 1933, 48 Stat. 1, which amended the Trading With the

---

[11] This twice quoted excerpt also demonstrates the want of merit in appellant's effort to make something of the fact that silver is found with gold (Br. 32). Congress was obviously aware of that fact. As the excerpt shows (Br. 5, 67), in the Act of March 9, 1933, 48 Stat. 1, 12 U.S.C. sec. 95(a), Congress specifically included silver as well as gold. Gold and silver were similarly coupled by the Congress in the Act of August 27, 1935, Ch. 780, Sec. 2, 49 Stat. 938, 939, 31 U.S.C. sec. 773(b) (see *infra,* p. 28). And, just as the appellant still has her gold mine and her gold-bearing ore, she still has such silver as is contained therein. None of it has been taken from her. Contrary to her assertion (Br. 32), she is free to process her mineral-bearing ore at any time it pleases her to do so.

[12] Prior declarations of the existence of national emergencies are Proclamation 2039 of March 16, 1933; Proclamation 2352 of September 8, 1939, 4 F.R. 3851; and Proclamation 2487 of May 27, 1941, 55 Stat. 1647. The last of those emergencies did not terminate until April 28, 1952. Proclamation 2974 of April 28, 1952, 66 Stat. C31, C32; *American Houses* v. *Schneider,* 211 F. 2d 881, 884 (C.A. 3, 1954). By that time, Proclamation 2914 of December 16, 1950, 15 F.R. 9029, had long since been issued. Thus for over 20 years there has been a national emergency. It is also to be noted that the authority delegated to the President and the Secretary of the Treasury under the Gold Reserve Act of 1934 was not restricted to time of war or national emergency. 48 Stat. 337, 343, 12 U.S.C. sec. 213.

Enemy Act of 1917, was " 'An Act to provide relief in the existing national emergency in banking, and for other purposes.' 48 Stat. 1." *Farber* v. *United States,* 114 F. 2d 5, 7 (C. A. 9, 1940) certiorari denied, 311 U. S. 706. The Act is in fact known and referred to as the "Emergency Banking Relief Act of 1933." E. g., *United States* v. *Levy,* 137 F. 2d 778 (C. A. 2, 1943). Thus, the Trading With the Enemy Act, as amended by the 1933 Act [and it is clear that it is the Act as amended by the 1933 Act, 48 Stat. 1, which appellant attacks (Br. 5, 67)] is not, as appellant would have it appear (Br. 36) merely "designed to prevent gold, among other properties, from reaching and benefitting the *enemy during time of war.*" [Italics as in appellant's brief.] And, since there was express congressional authority for the Executive action in the instant case, the case of *Little* v. *Berreme (The Flying Fish),* 2 Cranch 170 (1804), cited by the appellant (Br. 36), is not in point.

We submit, therefore, that all of appellant's attacks upon the statute and regulations relating to gold have long since been conclusively rejected.

## IV

### The Action Is Barred by the Statute of Limitations

Appellant complains that certain statutes enacted by the Congress in 1917, 1933 and 1934 and certain Executive Orders and administrative regulations issued pursuant to those statutes are invalid and unconstitutional (R. 5-10). Appellant further complains that these allegedly invalid statutes, Executive Orders and regulations prevented her from making lawful use of her property, directly interfered with her right to own and enjoy the use of private property, and deprived her of

her property without due process of law and without just compensation (R. 6-10).

However, 28 U.S.C. sec. 2401(a), *supra,* p. 2, provides, *inter alia:*

> Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action accrues.

The face of the complaint shows that the statutes complained of—the Gold Reserve Act of 1934 and the Trading With the Enemy Act, as amended in 1933—were passed by the Congress over 20 years prior to the filing of this action. Any taking of the appellant's property, or any deprivation of her use and enjoyment of it, occurred when these allegedly unlawful statutes were enacted and when the allegedly unlawful Executive Orders and regulations were made pursuant thereto. But there have been no changes in the official price paid for gold or in the regulations relating to the acquisition or sale of gold within the six-year period preceding the filing of this action.

In this respect also, appellant tends to defeat her own claim. As before (see *supra,* p. 6), appellant is confusing alleged tort with alleged taking. Thus, she argues (Br. 18): "The wrongs of the Government are continuous and being continuous she has the Constitutional right to challenge a portion thereof and waive the balance."[13] But if there were a taking in the instant case, it occurred when the Acts and regulations complained of were first adopted and appellant would not "continuously" since that time have had her property to be taken "every hour of every day" (Br. 18, 19).

---

[13] As noted previously (fn. 1, p. 6, *supra*), the appellant has not invoked the Federal Tort Claims Act, 62 Stat. 933, 28 U.S.C. sec. 1346(b), (R. 3; Br. 14-18).

Appellant confuses the taking of a property right and the exercise of the right taken. Thus, in *United States* v. *Causby,* 328 U.S. 256 (1952), an easement of flight was taken which was exercised whenever a plane took off or landed. Any "taking" here of a property right could only have occurred when the statutes were passed or the regulations issued.

## V

### The Complaint Fails to Allege Facts Sufficient to Establish Jurisdiction Over the United States

"Consent alone gives jurisdiction to adjudge against a sovereign." *United States* v. *U. S. Fidelity Co.,* 309 U.S. 506, 514 (1940). The United States has consented to suit against it in some circumstances. The appellant alleges (R. 3) that 28 U.S.C. sec. 1346 constitutes a waiver of sovereign immunity by the United States in an action such as is described in the balance of her complaint. She further asserts that her claim is founded "upon the Constitution, Acts of Congress, regulation of executive departments and upon implied contract with the United States * * * " (R. 3). Yet at no point in the balance of her complaint is there described any implied or express contract between the United States and the appellant.[14] There are, however, references to the Trading With the Enemy Act, the Gold Reserve Act of 1934, and the various proclamations and Executive Orders issued pursuant thereto. It must be assumed, therefore, that appellant bases her cause of action upon

---

[14] As shown in Point II, *supra,* pp. 7-17, this case does not present "an actual physical taking of an ascertainable thing of value * * * converted to a public use" (R. 13), such as is required by the authorities to constitute an implied contract which requires the payment of just compensation.

those statutes and various orders concerning the regulation of gold and the establishment of its value.

But even if those acts constituted jurisdictional grants, it is clear that consent to sue the United States, once given, may be withdrawn by Congress. *Maricopa County* v. *Valley Bank,* 318 U.S. 357, 362 (1943), stating "the power to withdraw the privilege of suing the United States or its instrumentalities knows no limitations." Thus, the Congress, by specific enactment, may limit certain general consent statutes, such as 28 U.S.C. sec. 1346, by expressly withdrawing consent in certain types of cases. Congress has done just that so far as the present action is concerned. By the Act of August 27, 1935, Ch. 780, sec. 2, 49 Stat. 938, 939, 31 U.S.C. sec. 773(b), *supra,* p. 2 Congress provided, in pertinent part, as follows:

> Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action * * * in any proceeding of any nature whatsoever * * * (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition * * * of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn * * *.

It follows that although appellant contends that her action is authorized expressly by 28 U.S.C. sec. 1346(a)(2), the Congress did not intend to grant—and has withdrawn—any consent in the type of action she is bringing, and, therefore, the Court has not acquired jurisdiction over the United States in this case.

## CONCLUSION

For the foregoing reasons, it is submitted that the judgment of the District Court should be affirmed.

Respectfully,

PERRY W. MORTON,
*Assistant Attorney General.*
CLARENCE E. LUCKEY,
*United States Attorney,*
*Portland, Oregon.*
JAMES W. MORRELL,
*Assistant United States Attorney,*
*Portland, Oregon.*
ROGER P. MARQUIS,
HAROLD S. HARRISON,
*Attorneys, Department of Justice,*
*Washington, D. C.*

DECEMBER, 1955.

APPENDIX

The challenged provision of the Gold Reserve Act of 1934, 48 Stat. 337, 340, states as follows:

> Sec. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States.

The challenged provision of the Trading With the Enemy Act, as amended by the Emergency Banking Relief Act of March 9, 1933, 48 Stat. 1, 12 U. S. C. sec. 95(a), states as follows:

> (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

* * * * *

The challenged parts of Executive Order No. 6260, as amended, 12 U. S. C. following sec. 95(a), state as follows:

Sec. 4. Acquisition of Gold Coin and Gold Bullion.—No person other than a Federal Reserve bank shall after the date of this order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive order * * * Licenses issued pursuant to this section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder. [As amended by Ex. Ord. No. 6556, promulgated January 12, 1934.]

Sec. 5. Holding of gold coin, gold bullion, and gold certificates.—After 30 days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this Executive order; provided, however, that licenses shall not be required in order to hold in possession or retain an

interest in gold coin, gold bullion, or gold certificates with respect to which a return need not be filed under section 3 hereof.

* * * * *

Sec. 6. Earmarking and export of gold coin and gold bullion.—After the date of this order no person shall earmark or export any gold coin, gold bullion, or gold certificates from the United States, except under license therefor issued by the Secretary of the Treasury pursuant to the provisions of this order.

* * * * *

Sec. 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this order. * * *

Sec. 10. Whoever wilfully violates any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

The challenged parts of the United States Treasury Gold Regulations, 31 C. F. R. Part 54, as amended, 19 F.R. 4309-4316, state as follows:

Sec. 54.11 *Civil and criminal penalties*—(a) *Civil penalties.* Attention is directed to section 4 of the Gold Reserve Act of 1934, which provides:

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or

held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred (31 U.S.C. 443).

(b) *Criminal punishment.* Attention is also directed to (1) section 5 (b) of the act of October 6, 1917, as amended, which provides in part:

Whoever wilfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation (12 U.S.C. 95a (3). [19 F.R. at pp. 4311-4312.]

* * * * *

Sec. 54.12 *Conditions under which gold may be acquired, held, melted, etc.* Gold in any form may be acquired, held, transported, melted, or treated, imported, exported, or earmarked only to the extent permitted by and subject to the conditions pre-

scribed in the regulations in this part or licenses issued thereunder [19 F.R. at p. 4312.]

* * * * *

Sec. 54.44 *Purchase price.* The mints shall pay for all gold purchased by them in accordance with this subpart $35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints. [19 F.R. at p. 4316.]

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

---

No. C-17892

UNITED STATES OF AMERICA, PLAINTIFF,

*v.*

STEPHEN GILBERT CRIPPEN and WOODROW WILSON ATWOOD, DEFENDANTS

---

No. C-17900

UNITED STATES OF AMERICA, PLAINTIFF,

*v.*

WILBUR M. WALLS, DEFENDANT

---

MEMORANDUM

It seems to me there is no doubt of the power of the Government as part of its monetary program to forbid the possession of gold bullion except upon license. The

question, it would appear, is a political one. See the opinion of Justice Miller in the First Legal Tender Case, and see the Second Legal Tender Case. The question being political, no constitutional question of the usual sort involving right to property or personal liberty arises.

Other questions argued have been considered.

The motions to dismiss are denied.

Dated December 31, 1954.

CLAUDE MCCOLLOCH,
*Judge.*

n.

---

Greenbackism, "16 to 1," and other monetary issues have all been fought over in times past as national political issues. Presidential elections have turned on them.

See a late case in the advance sheets. 124 F.Supp. 807.

C. McC.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 367867 684